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REVIEW OF THE IMPLEMENTATION OF THE
DECLARATION ON THE STRENGTHENING
OF INTERNATIONAL SECURITY

SECURITY COUNCIL
Forty-seventh year

Letter dated 11 August 1992 from the Chargé d'affaires a.i.
of the Permanent Mission of Albania to the United Nations
addressed to the Secretary-General

The Republic of Albania and the Albanian people follow with attention and great concern the development of the situation in former Yugoslavia. They fully share in the efforts that the European States and the United Nations are making to attain a peaceful and democratic solution to the crisis in ex-Yugoslavia. We have officially declared and reaffirm once again our objection to any resort to force and the conviction that this can never be a means of solving the Yugoslav crisis. At the same time, we support any effort for dialogue among all the parties, without exception, regarding the future of Yugoslav peoples, the right to self-determination, the observation of human rights based on the principles embodied in the Helsinki Final Act, the Paris Charter for a New Europe, other documents of the Conference on Security and Cooperation in Europe (CSCE) and Charter of the United Nations.

We are very concerned about the evident differences in assessments of the justifications for the demands and aspirations of various peoples of former Yugoslavia, as seen in the media and in certain diplomatic actions. Albanians have stressed the necessity that all sides in the conflict enjoy the right to the same treatment. It is difficult to explain support for full autonomy or even full independence for the Serbs outside Serbia, while the Albanians, numerically the third people in former Yugoslavia, are denied these very same rights. Any continuation of the policy that is currently regarded as

* A/47/150.

unbalanced and unjust will further intensify the conflict, not bring it under control.

Albania holds the view that the participation of the elected representatives of the people of Kosova in the London Conference on "Yugoslavia" is indispensable for a success of the Conference and for the restoration of peace and stability to the region.

Legally, it cannot be disputed that the exclusion of the elected representatives from Kosova from the Conference would violate the fundamental rights of the people of Kosova. Politically, the exclusion of the elected representatives of Kosova would negate the aspiration of the Conference to establish an overall framework for the resolution of the interconnected disputes and conflicts within and around the former Socialist Federal Republic of Yugoslavia. To exclude Kosova from the Conference and to exclude the situation within Kosova from the agenda of the Conference would mean that the seeds of further conflict will not be eradicated, but would instead be sown more widely. Why must Kosova participation in the London Conference on "Yugoslavia" be realized?

Kosova, a territorially defined entity inhabited by a population composed of about 90 per cent of ethnic Albanians, has been an autonomous entity since ancient times. Its independent status is recorded as far back as 297 B.C. Even during the period of the domination by the Ottoman Empire, Kosova formed an autonomous vilayet. After the dissolution of the Ottoman Empire, Kosova was artificially divorced from Albania, but its status as an autonomous entity entitled to exercise the right to self-determination was soon recognized. This recognition came in 1943, when the people of Kosova participated heroically in the struggle against Nazi tyranny.

Kosova's autonomy was confirmed in article 4 of the declaration of Jajce of November 1943 and in the proclamations adopted by the Anti-fascist National Liberation Conference held at Bujan at the end of that year. The Conference, which was attended by the representatives from Kosova, Serbia and Montenegro and by observers from the Anglo-American Military Mission at Kosova, issued proclamations which emphasized the need for all parties to cooperate in bringing about the defeat of Nazi tyranny. At the same time, it was stated and accepted that Kosova's participation in that struggle was also aimed at the achievement of self-determination, including the possibility of secession.

After the conclusion of the war, the authoritarian Tito government appeared to refuse to fulfil this aspiration of self-determination. Kosova was integrated into the Yugoslav Federation. It is noteworthy, however, that even the Tito government found it necessary to force the representatives of Kosova into professing that the joining of the Federation had been undertaken in pursuit of the right to self-determination of the people of Kosova. Even the Tito government thus recognized Kosova as a self-determination entity.

The special status of Kosova soon re-emerged within the structure of the Yugoslav Federation, where it once more retained its autonomous status. This

status was last revised when the 1974 Constitution of the Socialist Federal Republic of Yugoslavia was adopted. Under the 1974 constitution autonomy is very wide indeed, granting significant authority of sovereign decision-making to the constitutional organs of Kosova.

Although the constitution refers to Kosova as a constituent part of Serbia, it is clear that Kosova is nevertheless a nation entitled to exercise the right of self-determination. This is evidenced in the following constitutional provision, which states that "the working people and the nations and nationalities shall exercise their sovereign rights in the Socialist Republics, and in the Socialist Autonomous Provinces, and shall exercise these rights in the Socialist Federal Republics of Yugoslavia when in their common interest it is so specified by the present Constitution" [Constitution of the Socialist Federal Republic of Yugoslavia, introductory part, section I, English in Blaustein & Flanz, Constitutions of the Countries of the World, instalment "Yugoslavia", at 29 f]. In other words, sovereignty resides in the constituent units of the Federation and is only devolved upon federal or other structures in narrow areas defined in the constitution. And the autonomous territories are specifically included in the category of constituent units within which sovereignty resides. This fact is restated in article 4, which defines the autonomous territories as units of self-management in which "the working people, nations and nationalities realize their sovereign rights".

The right to self-determination of the people of the autonomous territories and the consensual nature of the association of republics and autonomous territories in the Federation is explicitly confirmed in article 1 of the constitution and reflected in the introductory provisions which explicitly confirm the right of "every nation to self-determination, including the right to secession" [idem].

This striking affirmation of the status of Kosova as a self-determination unit of a federal nature is confirmed throughout the substantive parts of the constitution. Autonomy extends to legislation, the executive and the judiciary. Autonomous territories are even entitled to establish "national banks" [article 262], to levy taxes [article 265], to "agree" to treaties negotiated by the federal authorities which are of specific concern to them [article 271], to establish relations with agencies and organizations of other States and with international agencies and organizations [idem and amendment XXXVI], etc. In addition to these extensive rights, which are, in fact, in excess of rights enjoyed by many constituent units of other federations, the autonomous territories are represented equally within the central organs of the federation, including the Federal Presidency [article 321].

The autonomous status of a federal nature of Kosova was an expression of the right to self-determination enjoyed by the population of Kosova. Such a fundamental right of a people is inalienable; it could not be unilaterally abolished by the organs of the Socialist Federal Republic of Yugoslavia and, a fortiori, by the authorities of Serbia. Nevertheless, from around 1981 onwards, Serbia increasingly attempted to interfere with the administration of

autonomous Kosova. By 1988, Serbia started to amend its own constitution, with a view to suppressing the autonomy of Kosova. Although Kosova is nominally referred to as a constituent part of Serbia, the Federal Constitution makes it clear that Kosova's constitutional order existed in parallel to the Serbian constitutional order, rather than under it.

Even if it were possible constitutionally to alter the status of republics and autonomous territories, the Serbian actions were clearly in violation of the Constitution of the Socialist Federal Republic of Yugoslavia - a constitution which Serbia asserts it has been fighting vigorously to preserve, even to the point of invading the territories of Croatia and Slovenia. According to that constitution, a change in the Federal Constitution could only be effected by the organs of the Federation, in particular the Assembly of the Socialist Federal Republic of Yugoslavia [article 382]. In addition to the consent of the federal organs, such changes would also require the agreement of the assemblies of the other republics and autonomous territories, including, of course, the republic or autonomous territory concerned [article 398].

An attempt to undermine the Federal Constitution by adopting conflicting constitutional provisions within a constituent republic is legally irrelevant. This is established explicitly in article 206 of the Constitution of the Socialist Federal Republic of Yugoslavia. The Serb attempts to abolish the autonomous status of Kosova therefore amounts to a legal nullity. This is evidenced, for example, by the fact that Kosova retained its place on the Federal Presidency, even after the purported legal changes had taken place (although the individual holding that position was exchanged).

Although the Serb attempts to undermine Kosova's status as an autonomous constituent unit of a federal nature were legally irrelevant, the Belgrade authorities have taken violent action in an attempt to enforce Serb rule in Kosova. Under an unlawfully proclaimed state of emergency, fundamental human rights have been grossly and persistently violated. Serb authorities have attempted to abolish the Kosova Assembly and replace the Kosova Presidency.

Kosova attempted to respond to these pressures by applying the procedures provided for in the Federal Constitution. It appealed to the Federal Constitutional Court for protection. However, the Court was unable to function and, even at the time of the final dissolution of the Socialist Federal Republic of Yugoslavia, had still not given a judgement. Faced with this desperate situation, on 7 September 1990, the Kosova Assembly adopted a new Constitution, based on the principles of self-determination, equality and sovereignty. On 26 September 1991, when the dissolution of the Socialist Federal Republic of Yugoslavia was imminent, the people of Kosova, in whom sovereignty resides according to the Constitution of the Socialist Federal Republic of Yugoslavia, held a referendum on independence in the exercise of the right to self-determination. All segments of the population, including members of ethnic minorities, were eligible to participate in the referendum. Of those eligible to vote, 87.01 per cent actually participated in the ballot; and 99.87 per cent of those voting opted for independence.

An election was held on 24 May this year under the terms of the Constitution, resulting in the establishment of the representative body submitting this memorandum on behalf of the people of Kosova. There were 853,432 registered voters, of whom 762,257 participated in the vote. The elections were open to all parties, including those representing ethnic minorities (under the electoral system of Kosova, ethnic minorities are guaranteed representation according to the percentage of population and proportional distribution).

Like the referendum, the election was internationally mounted. Despite Serb attempts to interfere with the polling, the elections have been described as generally fair. The Democratic League of Kosova achieved 66 per cent of the seats in parliament (96 deputies) and thus emerged as the strongest party. Dr. Ibrahim Rugova of that party was elected President, with the support of most other parties, including the Muslim Party of Democratic Action and the Turkish People's Party.

The elected representatives of Kosova have rejected the purported incorporation of Kosova into the rump "Federal Republic of Yugoslavia".

Kosova is an entity which fulfils the criteria for self-determination established even by the Badinter Arbitration Commission operating under the authority of the European Community (EC) peace conference. It is a territorially defined unit of significant size. Its population of 2 million is roughly equal in number to the population of some of the other former Yugoslav republics. That population is composed of an overwhelming majority of ethnically distinct people who have administered themselves autonomously for a considerable period.

The peoples of Kosova, in the exercise of the inalienable right to self-determination, have asserted their separate legal identity - an identity which already existed within the structure of the Socialist Federal Republic of Yugoslavia. The application of the right to self-determination in this context became necessary when Serbia overturned the constitutional balance within the Socialist Federal Republic of Yugoslavia, which provided for equal status of Kosova within the Federation. In fact, Serbia has been attempting to turn Kosova from a self-determination entity of a federal nature into a mere administrative district, trampling upon the rights of the people of Kosova in so doing.

The violent suppression of the right to self-determination of a people amounts to a grave violation of international law, possibly even to an international crime. The people of Kosova are legally and morally entitled to speak up, be heard and make their plight known.

The people of Kosova, through their representatives, have embraced all the conditions for recognition established by the EC and its member States. They have:

(a) Committed themselves to a broad range of human, minority and group rights, as outlined in chapter II of the Carrington draft Agreement on "Yugoslavia" and in the EPC statement on recognition of former Yugoslav entities of 16 December 1991;

(b) Expressed their desire and eagerness to contribute actively and constructively to the success of further peace talks;

(c) Confirmed their adherence to the principle of the inviolability of borders and stated that they have no territorial claims whatever towards neighbouring States and that they do not intend to engage in hostile propaganda activities against neighbouring States, including the use of a denomination which implies territorial claims;

(d) Confirmed their desire to accede to all appropriate international conventions of universal applicability, in particular the Non-Proliferation Treaty and other relevant instruments relating to the maintenance of international peace and security and disarmament;

(e) Agreed to settle by agreement, including, where appropriate, by recourse to arbitration, all questions concerning State succession and regional disputes.

Even if other States and entities are not at present willing formally to recognize the new status of Kosova, it cannot be denied that, as a former autonomous unit of a federal nature within the Socialist Federal Republic of Yugoslavia, its situation is intimately connected with the overall settlement of the "Yugoslav" crisis. A failure to invite the participation of the elected representatives of Kosova could only lead to even stronger feelings of abandonment and despair within Kosova. Continued and unrestrained violence in the suppression of the rights of the people of Kosova may well lead to an explosion of the situation involving the region as a whole. Such a result cannot be prevented by ignoring the problem.

I would very much appreciate it if you would have the text of the present letter circulated as an official document of the General Assembly, under item 69 of the provisional agenda, and of the Security Council.

(Signed) Sokol NECAJ
Chargé d'affaires a.i.